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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969.

No. 661.

HELLENIC LINES LIMITED AND UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

BRIEF ON BEHALF OF NATIONAL MARITIME UNION OF AMERICA AS AMICUS CURIAE.

The National Maritime Union of America has obtained and filed the written consents of counsel for all parties herein to file this brief as amicus curiae in support of respondent.

STATEMENT OF THE CASE.

Respondent, a Greek merchant seaman, signed aboard the S. S. "Hellenic Hero" in Greece. Said vessel is owned by Universal Cargo Carriers, Inc., a Panamanian corporation, which in turn is owned by Hellenic Lines, a Greek corporation. The vessel flies the Greek flag. The said companies are managed and controlled from principal offices in New York City.

Pericles G. Callimanopoulos, a Greek citizen, owns 95% of the stock of Hellenic Lines. He has resided in the United States since 1945, and performs duties as managing director of the company from his office in the United States. Mr. Callimanopoulos became a "permanent" resident in 1957. Under his direction, the "Hellenic Hero" regularly and continuously runs to and from United States ports. Said vessel earns its entire income from transporting cargo to and from the United States.

On August 3, 1965, while aboard the vessel in the Port of New Orleans, the respondent was injured because of the negligence of petitioners and the unseaworthiness of the vessel. He brought suit in the Southern District of Alabama for damages under the Jones Act,[1] and obtained judgment against both petitioners. The petitioners appealed, contesting the applicability of the Jones Act. The United States Court of Appeals for the Fifth Circuit affirmed the judgment, and denied rehearing (412 F. 2d 919 (1969)). The companies filed Petition for Certiorari which was granted by this Court on January 12, 1970. Briefs have been filed herein by the petitioners, and, upon consent of all parties, by the Royal Greek Government, the Greek Chamber of Shipping and the Union of Greek shipowners, as amici curiae, in support of petitioners.

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1. Act of June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007, 46 USCA 688.

INTEREST OF NATIONAL MARITIME UNION OF AMERICA.

The National Maritime Union of America, AFL-CIO, is a labor organization representing American merchant seamen. This union represents approximately 40,000 seamen and has labor agreements with 89 American steamship companies which operate cargo and passenger vessels throughout the world.

This union and its members are directly and deeply concerned with the effect of any decision of this Court concerning the application of the Jones Act to a merchant seaman where, although the vessel flies a foreign flag, the principal stockholders of the company are residents of the United States and the company has its principal offices in the United States and conducts its primary business here, and where the very ship involved earns its regular income from the cargo going to or from the United States—where the vessel is, in fact, flying a foreign "flag of convenience."

Although essentially American-owned and commercially domiciled in the United States, and regularly doing business in our commerce in competition with American-flag vessels, these companies are evading responsibility for compliance with American statutes, labor standards, safety provisions, shipping regulations and tax laws, to the serious detriment of our merchant marine and our economy. The growth and protection of the American merchant marine, as well as the American national interest are the constant concern of this union and its members.

PRELIMINARY STATEMENT.

It would be in conflict with the declarations of Congressional intent to conclude that, in enacting the Jones Act, or any of the Merchant Marine Acts, Congress intended to exempt therefrom vessels owned and operated by companies domiciled in the United States and/or owned by residents of the United States, because of the facade of a foreign flag. Such an exemption would confer upon these vessels, which regularly use our ports to compete with American-flag shipping, a distinct competitive advantage in operational costs, at the expense of the American vessel and taxpayer. Public policy relative to American economic and military requirements demands that our laws bind equally all who are regularly involved in our commerce, be they citizens or aliens. Such conformity to American laws and standards will place the alien on an equal basis with the American merchant marine in competing for American business. Permitting "the law of the flag" to govern blindly the activities of these vessels would be an act of discrimination against our own merchant marine and our seamen. It is, indeed, cheaper to operate beyond the pale of American laws, and, thus, it makes for easier competition against American-flag vessels in the quest for the American dollar—free of American obligation.

Where American national interest is involved, all who approach our shores for a share of our national product and economy must be subject to our laws. This nation must not permit foreign-flag ships to take advantage of our benefits equally with the American merchant marine, and, simultaneously, evade the accompanying obligations. The Jones Act, a broad ameliorating statute, was passed to benefit all seamen who come within the American jurisdiction, and all who submit thereto must be governed by that law.

ARGUMENT.

I. Where a Shipping Corporation Is Commercially Domiciled in the United States and Its Stockholders Are U. S. Residents, and the Vessel's Operations Are American-Based, and While in American Port a Foreign Seaman Is Injured Thereon in His Employment, the Facade of a Foreign Flag Will Not Prevent the Application of the Jones Act.

The petitioners and the amici on their behalf seek help from the decision of this Court in *Lauritzen v. Larsen*, 345 U. S. 571, 97 L. ed. 1254 (1953). The *conclusion* reached upon the facts in that case is wholly inapposite to the present one. However, the analysis and reasoning in *Lauritzen* demonstrate the propriety of the decision of the Court below upon the instant facts.

In *Lauritzen*, this Court held that the Jones Act did not apply to a seaman's injury aboard a Danish-flag vessel where the event, the seaman and the shipowners were all foreign, and the only American contact was that articles were signed in New York. The Court noted that maritime law tries to resolve conflicts between competing laws "by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved"; that is, the criteria are found by "weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." (U. S. at 582, L. ed. at 1267).

This Court then listed seven factors to be weighed: 1. The place of the wrongful act; 2. the law of the flag; 3. the allegiance or domicile of the injured; 4. the allegiance of the defendant shipowner; 5. the place of contact; 6. inaccessibility of foreign forum; 7. the law of the forum. In *Lauritzen*,

the injury occurred in Cuba; here, it occurred in the United States. In that case and this one, the injured seaman was a foreigner, and a non-resident. In *Lauritzen,* it appeared "that this owner is a Dane by nationality and domicile" (U. S. at 588, L. ed. at 1270). But here, while the owning corporations may be Panamanian and Greek, the actual owners of these companies are 20 year domiciliaries of the United States; and, as more fully discussed hereinafter, the companies themselves are domiciled in and operate wholly out of United States executive offices. In *Lauritzen,* the seaman relied chiefly on the fact that shipping articles had been signed in New York. This Court held that "the place of contracting . . . was fortuitous" since the "seaman takes his employment . . . where he finds it" (U. S. at 588, L. ed. at 1271). Thus, the fact that Rhoditis signed on the "Hellenic Hero" in Greece is of minimal, if any, significance. The accessibility of a foreign forum, comparable in both of these cases, was described by this Court in *Lauritzen* as "not persuasive", since even American courts can grant a forum under a foreign law, if the American law be deemed inapplicable. (U. S. at 589-90, L. ed. at 1271-72).

In both *Lauritzen* and the instant case, the forum was the same. In *Lauritzen,* however, this Court was caused to note that the fact that the shipowner does frequent business in the forum state "may fall quite short of the considerations necessary to bring extra territorial torts to judgment under our law." (U. S. at 590, L. ed. at 1272.) But, in the instant case, first, the shipowner corporation has its main office in the United States, all management of business and operations is performed in the United States and the vessel involved operates exclusively to or from U. S. ports and earns its entire income in such commerce. Second, we are not here dealing with an "extra-territorial tort", but with an event that occurred within the United States. The question for review as expressed by the petitioners asks whether

the courts below were correct in applying the Jones Act in this case "solely" on the ground that the majority stockholder of the corporate owner resided in the United States.[2] Petitioner ignores the fact that the accident occurred in the Port of New Orleans, and, that the petitioner corporations have their principal offices, operations and control here, 412 F. 2d 919, 921, 924-25.

The "law of the flag" in *Lauritzen,* as here, was foreign. This Court there said that this factor is of "cardinal importance" and must prevail "unless some heavy counterweight appears" (U. S. at 584, 586, L. ed. at 1269, 1270). In *Lauritzen,* this Court deemed the other "connecting events" as weighing heavily in favor of Danish law, since the only contrary factors were the facts that service of process was in New York and the plaintiff signed on the vessel there (U. S. at 592-93, L. ed. at 1273). Most significant are these remarks by Mr. Justice Jackson (U. S. at 592-93, L. ed. at 1273):

> ". . . We do not question the power of Congress to condition access to our ports by foreign-owned vessels upon submission to any liabilities it may consider good American policy to exact. But we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters."

Under this Court's pervasive reasoning and discussion, the facts in this case demand the opposite conclusion, because the "heavy counterweight" *does* appear.

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2. Petitioners assert that this stockholder resided here "as a representative of Greece to the United Nations." However, the records show only testimony by a representative of petitioner's claims manager that Mr. Callimanopoulos was a member of the Greek delegation to the United Nations (R. 114-116). This is wholly insufficient to achieve immunity, which is limited to ambassadors and ministers plenipotentiary, or by specific designation and agreement. Agreement between U. N. and U. S., August 4, 1947, Ch. 482, Sec. 15, 22 USCA 287 (note), Sec. 15.

The instant facts show that the Panamanian and Greek corporations which own the "Hellenic Hero" have principal offices in New York and another in New Orleans. Hellenic Lines is managed from a base in New York, and all duties of management are performed there (412 F. 2d at 921). Further, the "Hellenic Hero", which is the vessel involved, not only regularly runs to or from United States ports, but her *entire income* is earned from cargo going to or from the United States.

In addition, and most significant to this Court's discussion in *Lauritzen,* these American-domiciled owning corporations are owned by shareholders who have resided in New York since 1945. The majority owner, Pericles Callimanopoulos became a "permanent resident" in 1956 or 1957.[3] In New York, Mr. Callimanopoulos performs all duties as managing director of the owning corporation, and it is under this direction that the "Hellenic Hero" has been operating (412 F. 2d at 921).[4]

In *Lauritzen,* Mr. Justice Murphy made note of the recent practice of American shipowners adopting "flags of convenience", in discussing the "allegiance of the defendant shipowner" (U. S. at 587-88, L. ed. at 1270):

> "Until recent times this factor was not a frequent occasion of conflict, for the nationality of the ship was that of its owners. But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent ship-

3. *Tsakonites v. Transpacific Carriers Corp.,* 368 F. 2d 426, 427 (2 Cir., 1966).

4. Petitioners and their amici urge that under this reasoning, "the great merchant fleets, passenger and cargo vessels" such as Cunard Line, et al., should also be told that their "commercial presence in the United States" overrides their flags (Brief of Amici Curiae, Greek Chamber of Shipping, et al., p. 10). This alarm is obviously misconceived, for we are here dealing, not with mere "commercial presence" of a foreign corporation, but with corporate and shareholder *domicile, operation* and *control* in the United States.

> ping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them. But here again the utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner is a Dane by nationality and domicile."

Here, on the other hand, we have owning corporations and individual stockholders who are wholly, and for more than a score of years, *domiciled, resident and operating in the United States.* Further, they make their living, not sporadically but regularly, in American commerce. Indeed, the only non-American factor is the retention of Greek and Panamanian nationality and incorporation. From these, the petitioners have eked the fiction of "foreign-flag"[5] in order to insulate themselves from the laws of the United States, despite the fact that they are *long-time United States domiciliaries.*

In view of the American domicile, ownership and operation in this case, the Court below concluded that the "Hellenic Hero's" flag "is more symbolic than real", so that the "flag" is not due the same weight which *Lauritzen* gave to "a more sturdy flag", and said: "We therefore pierce the corporate veil and conclude that the *Hero's* flag is merely one of convenience." (412 F. 2d at 923).[6]

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5. In *Cunard Steamship Co. v. Mellon,* 262 U. S. 100, 123-24, 67 L. ed. 894, 902 (1923), this Court said, in response to the "law of the flag" argument that "the statement sometimes made that a merchant ship is a part of the territory of the country whose flag she flies. . . . is a figure of speech.—a metaphor * * * a fiction. . . ."

6. The sheer illusory nature of the *Greek* flag is further emphasized by the fact that the ship is owned by Universal Cargo Carriers, which is a *Panamanian* corporation, and is, in turn, owned by Hellenic Lines, a *Greek* corporation.

The Court below referred, in its decision, to *Bartholomew v. Universe Tankships,* 263 F. 2d 437 (2 Cir., 1959). The decision in that case, which followed and discussed *Lauritzen* emphasized the uselessness of injecting foreign incorporation or registry between American-domiciled owners and an American event. In *Bartholomew,* Judge Medina reviewed the teachings of *Lauritzen* as applied against prior decisions of this Court and various Courts of Appeals. He noted a general refusal of the complete application of the Jones Act, despite its general language because of the necessity of a "mutual forbearance to avoid international retaliation", as expressed in *Lauritzen.* But, he noted, too, that the absence of any "single special factor of obvious significance" would not necessarily defeat the application of the Jones Act. Thus, the Jones Act has been applied despite a foreign flag, and although the tort did not occur in American waters (263 F. 2d at 440).[7] Contacts considered significant in one case, he noted have been held not controlling in another. (440) He concluded that the test is that "substantial" contacts are necessary. Thus, each factor is to be weighed and evaluated to reach "a rational and satisfactory conclusion" as to whether the factors add up to the necessary substantiality. However, Judge Medina admonished:

> ". . . each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act. . . ." (441)

Continuing, he stated that "the practice in this type of case of looking through the facade of foreign registration and

7. Indeed, Judge Medina pointed out that in *Uravic v. Jarka Co.,* 282 U. S. 234, 75 L. ed. 312 (1931) and in *Gambera v. Bergoty,* 132 F. 2d 414 (2 Cir., 1942), ownership of the vessel by American citizens was lacking.

incorporation to the American ownership behind it is now well established. . . . " (442), and that

> ". . . This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. . . . In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the Stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act."

As the Court below noted in the instant case, the fact that the owners here are not American citizens as in *Bartholomew,* but aliens domiciled in the United States, makes no difference in piercing the flag of convenience, since aliens residing here are subject to the same commercial and tort laws as if they were citizens (412 F. 2d at 924).[8] The rele- below (412 F. 2d at 923):[9]

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8. Citing *Leonhard v. Eley,* 151 F. 2d 409, 410 (10 Cir., 1945), where the Court held that the duties and obligations of resident aliens "do not differ materially from those of . . . citizens".
vant factors require the conclusion reached by the Court

9. Recently, in *Groves v. Universe Tankships, Inc.* (S. D. N. Y., January 20, 1970) 38 L. W. 2417, the Court similarly found the "heavy counterweight" of a foreign flag, where the seaman and the owning corporations were foreign, but whose stock was owned almost entirely by two American citizens in residence, who ran the business

". . . In this case we find that heavy counterweight: the 'Hellenic Hero' was for all commercial purposes owned and operated by a United States domiciliary."

In *Romero v. International Terminal Operation Co.*, et al., 358 U. S. 354, 3 L. ed. 2d 368 (1959), this Court discussed "the broad principles of choice of law and the applicable criteria of selection set forth in Lauritzen", admonishing that "due regard must be had for the differing interests advanced by varied aspects of maritime law." (U. S. at 382, L. ed. at 388.) This Court noted that the doctrines such as *lex loci delicti* will not be mechanically applied; however, it was not dismissed as an item of consideration. Instead the controlling considerations were held to be *"the interacting interests of the United States and of foreign countries."* (U. S. at 383, L. ed. at 388.) In *Romero,* as in *Lauritzen,* both vessels were under foreign flags, both seamen were foreigners, the owning corporations were foreign, and were owned by foreign citizens and residents. In *Romero,* unlike *Lauritzen,* the injury occurred in American waters, but Mr. Justice Frankfurter said that "the amount and type of recovery which a foreign seaman may receive from his foreign employer while sailing on a foreign ship should not depend on the wholly fortuitous circumstance of the place of injury." (U. S. at 384, L. ed. at 389.)

It is clear that this Court, in its application of the Jones Act in the case of a foreign flag vessel, acts upon the varying interests of the United States depending upon the varying factors. The more transparent the facade of "foreignness", the greater the "interests" of the United States. In *Lauritzen* and *Romero,* the foreign owning and operating corporations were, in fact, *foreign.* In the instant case, as

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from principal offices in the United States. Judge Bryan said that the foreign registration and incorporation were "a facade to disguise American ownership, operation and control and are merely mechanics in a scheme designed to avoid the consequence of such ownership and evade American shipping laws."

held by the Court below, they were merely *fictions,* and the real ownership was in persons in permanent residence in the United States.

In *Southern Cross S. S. Co. v. Firipis,* 285 F. 2d 651 (4 Cir., 1960), a Greek seaman was injured aboard Honduran-flag vessel in the port of Norfolk. The Court noted the seven factors as set out in *Lauritzen,* acknowledging that the greatest weight was given to "the law of the flag". However, the Court said, "if the law of the flag is to control, the flag must not be one of convenience merely but bona fide," quoting the discussion of that point by Mr. Justice Jackson in *Lauritzen* (345 U. S. at 58). The ship was owned by a Liberian corporation, whose stock was owned by Greek citizens (80%) and an American citizen (20%). Orders directing ship movements came from both places (though the opinion indicates that "effective control" appeared to be "by American interests"). In view of this "effective [American] control" and the fact that the injury occurred in an American port, the Court held that "the flag was nothing more than illusory" and that the Jones Act applied (654, 655).[10] Chief Judge Sobeloff quoted the language from *Bartholomew* (263 F. 2d at 440) that, under *Lauritzen,* "the contacts considered most vital in one case are not necessarily of controlling importance in another." (285 F. 2d at 655).

In its opinion the Court below recognized that, on the same facts as here, a contrary result was reached by the Second Circuit in a 2-1 decision, in *Tsakonites v. Transpacific Carriers Corp.,* 368 F. 2d 426 (2 Cir., 1966). Peti-

10. In a footnote, p. 654, the opinion states:

"Moreover, even in situations where the flag was not shown to be merely one of convenience, other considerations have been held to justify the application of the Jones Act to ships of foreign registry. The Supreme Court in the Lauritzen case held that the law of the flag was the most important element, not that it was always the controlling element, and the Court recognized that heavy countervailing considerations might override it. . . ."

tioner, of course, relies on that case. The Court below, however, was unable to accept the reasoning and conclusion of the majority, but agreed with the "persuasive logic" of Judge Waterman's dissent (925). As the Court below concluded, Judge Waterman would have "pierced through the facade of foreign registration and foreign incorporation and have applied United States law." Since the injury occurred in the United States and the defendant shipowner, though an alien "has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him", and one which gives to him the same constitutional protections [11] and places on him the same duties and obligations [12] as if he were a citizen (368 F. 2d at 429-30). Thus, Judge Waterman concluded, unless the same obligations that United States law imposes on citizen-shipowners, are imposed on resident alien shipowners, "a resident alien-shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American shipowner (368 F. 2d at 430).

As the Court below concluded, "the power of the flag is not limitless, and its cloth should not be stretched beyond realistic and reasonable lengths"; "maritime allegiance" must not be measured by a subjective-nationalism, "but in terms of economic ties" which are real and palpable (412 F. 2d at 926). In applying either the Jones Act or the "law of nations" the courts must seek the "factual" rather than the "fictional" factors, for the choice of law deals with fact.

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11. Citing *Kwong Hai Chew v. Colding*, 344 U. S. 590, 596, 97 L. ed. 576 (1953).

12. Citing *Leonhard v. Eley*, 151 F. 2d 409, 410 (10 Cir., 1945).

II. The Jones Act Was Intended to Apply to and Benefit All Seamen on Vessels Owned or Operated by American Interests Irrespective of the Flag Carried.

The pre-*Lauritzen* background of the Jones Act, its Constitutional basis, and the policy which generated it, confirm the decision of the Court below. The Act was the culmination of the consistent trend toward the protection of the interests of merchant seamen, as an implementation and exercise of the power of Congress to regulate commerce and to nurture and protect American interests against foreign incursion. Those interests which seek to limit its application urge conflict between it and the laws of nations or international maritime law. However, the power of Congress cannot be denied, and the protective policy expressed in the Act is clear. In its plain language and operation, it is broad in scope, giving protection to all seamen injured in their employment in which the United States has a legitimate interest. Therefore, it benefits foreign as well as American seamen and binds all who submit themselves to our jurisdiction by entering American ports and partaking of our commerce.

This Court has expressed a strong policy, based especially on economic and defense requirements, that our laws be applied equally to all who conduct regular business in the United States, be they aliens or citizens. The general policy was early stated in *The Exchange v. Mc Faddon*, 7 Cranch 116, 136, 144, 3 L. ed. 287, 293, 296 (1812), where Mr. Chief Justice Marshall said:

> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of

that sovereignty to the same extent in that power which could impose such restriction."

* * *

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country . . ."

It is a shocking fact that, as of 1969, vessels flying the American flag carried only six per cent of our total imports and exports.[13] The Jones Act, as well as the prior Seamen's Act which it amended were intended by Congress to reduce the competitive advantage of foreign-flag operators seeking American business. As it is Constitutionally empowered, Congress has recognized that detriment to the American economy by weighted foreign competition is an effect going far beyond the "internal affairs" of a foreign vessel. Congress has refused to permit the American maritime industry to be so handicapped in the face of growing foreign competition. The result was a direct benefit to foreign seamen as well as to the American economy.

The Seaman's Welfare Act of March 4, 1915, c. 153, Sec. 20, 38 Stat. 1185, was intended by Congress to promote, enlarge and strengthen the United States merchant marine. The Legislative History shows that its proponents, noting that "the operating expenses of a foreign

13. Remarks by Congressman Dent, March 20, 1969. Cong. Rec. E. 2267.

vessel are lower than [those] of an American vessel", intended that the wage and employment provisions of the Act "will equalize the cost of operation so that vessels of the United States will not be placed at a disadvantage", H. R. Rpt. No. 645, 62nd Cong., 2nd Session, p. 7. The Merchant Marine Act of 1920,[14] broadly amended various statutes concerning the merchant marine. Sec. 1, 46 USCA 861, expressed its purpose and policy:

> "Purpose and policy of United States
>
> "It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; *and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine,* and, insofar as may not be inconsistent with the express provisions of this act, the Federal Maritime Board and the Secretary of Commerce shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained." (Emphasis supplied).

Section 33 thereof was the Jones Act, 46 USCA 688, an amendment to Section 20 of the Seaman's Act of March 4, 1915, expanding rights to recover damages to "any seaman

14. Act of June 5, 1920, c. 250, 41 Stat. 1007, 46 USCA 861, et seq., etc.

who shall suffer personal injury in the course of his employment. . . .''

In *Strathearn S. S. Co. v. Dillon,* 252 U. S. 348, 64 L. ed. 607 (1920), in holding that a British seaman on a British vessel in an American port, is entitled to the protection of Sec. 4 of the Seaman's Act of March 4, 1915, 38 Stat. 1164 Ch. 153 (concerning payment of wages), to which statute the Jones Act is an amendment, Mr. Justice Day said (U. S. at 354-55, L. ed. at 611):

> ''. . . Apart from the text, which we think plain, it is by no means clear that if the act were given a construction to limit its application to American seamen only, the purposes of Congress would be subserved; *for such limited construction would have a tendency to prevent the employment of American seamen,* and to promote the engagement of those who were not entitled to sue for one-half wages under the provisions of the law. But, taking the provisions of the act as the same are written, we think it plain that *it manifests the purpose of Congress to place American and foreign seamen on an equality of right* in so far as the privileges of this section are concerned, with equal opportunity to resort to the courts of the United States for the enforcement of the act. . . .'' (Emphasis supplied).

In *Monteiro v. Sociedad Maritima San Nicolas, S. A.,* 280 F. 2d 568 (2 Cir., 1960), an action for penalty wages under 46 USCA 596, by a foreign seaman on a foreign vessel paid off in the United States, holding that the seaman could recover under the ''foreign vessel'' provision, Judge Friendly said (573-74):

> ''This conclusion is fortified by examination of the reasons behind the insertion of the foreign vessel proviso. These reasons, hinted at in Mr. Justice Day's opinion in Strathearn S. S. Co. v. Dillon, supra, 252

U. S. at page 355, 40 S. Ct. at page 352, are impressively marshalled in the opinion that Mr. Justice Brandeis had prepared for possible delivery in that case, see Bickel, The Unpublished Opinions of Mr. Justice Brandeis, pp. 35, 47 ff., reprinted in 69 Harv. L. Rev. 1177, 1190 ff. Review of the legislative materials shows that the proviso was inserted for the benefit not so much of foreign as of American Seamen. *It was thought that to apply to foreign vessels touching at American ports some of the same requirements imposed upon our own would tend to 'equalize the cost of operation' of American and foreign flag vessels and thereby discourage American shipowners from placing their vessels under foreign flags.* See particularly H. R. Rep. 645, 62nd Cong., 2d Sess. (1912), p. 8; H. R. Rep. 852, 63rd Cong., 2d Sess. (1914), p. 19; and the remarks of Senator Fletcher, 50 Cong. Rec. 5748-49 (1915). This purpose could be better attained by giving foreign seamen unobstructed and mandatory access to the federal courts rather than by leaving it to the discretion of each district judge to remit the seaman to a foreign consul, who could hardly be counted upon to apply the special remedies of §§ 596 and 597. . . ." (Emphasis supplied).

Thus, the Courts have confirmed that Congress has sought, by the Seamen's Act and amendatory Jones Act, to reduce the competitive advantage of foreign flag operators.[15]

15. "This affirmative intention of the Congress with regard to labor relations on foreign vessels has been expressed by the Congress in statutes dealing with wage payments to seamen on foreign vessels in American ports, the so-called 'Seamen's Wages Acts.' These Acts of Congress were actuated by the American flag shipping's apparent interest in reducing the competitive advantage of the foreign-flag operators by indirectly forcing them to pay higher wages, and so equalizing the operating costs of American and foreign-flag operations. . . ." Boczek, "Flags of Convenience" (Harvard Univ. Press, 1962), page 161.

In *Gerradin v. United Fruit Co.*, 60 F. 2d 927 (2 Cir., 1932), Judge A. N. Hand, after pointing out that many United States statutes impose obligations upon American and foreign shipowners, concerning safety measures (60 F. 2d at 928), which contain "minute details of internal management", said (60 F. 2d 929):

> ". . . So far as such an objection may have force, *it is enough to say that matters of 'internal management' are not involved in an action by a seaman to recover damages for injuries suffered through the negligence of the shipowner.* A similar contention was made in Uravic v. Jarka, supra, to defeat the action by an American stevedore for injuries suffered while at work in New York Harbor on a German-owned ship, but Justice Holmes answered it by saying (282 U. S. at page 240, 51 S. Ct. 111, 112, 75 L. Ed. 312): '* * * We see no reason for limiting the liability for torts committed there when they go beyond the scope of discipline and private matters that do not interest the territorial power.' " (Emphasis supplied)

Complying with this Court's teaching, that the "attending circumstances of the particular case" will control the decision,[16] in *Gambera v. Bergoty*, 132 F. 2d 414 (2 Cir., 1942), the Court applied the Jones Act where the injured seaman was an alien of 20 years' residence here,[17] and was injured aboard a foreign-flag vessel within United States waters. The Court recognized that where an alien seaman is serving on a foreign ship owned by aliens and on a voyage which begins and ends abroad, he cannot sue under the Jones Act for injuries suffered "while the ship happens to be stopping at a port of call within our territorial waters"

16. *Wildenhus' Case*, 120 U. S. 1, 30 L. ed. 565, 569.

17. The seaman had taken his "first papers" for naturalization.

(415). But, the Court said that the facts at issue were different. The seaman had lived in the United States for 20 years, serving mostly on American ships, and the voyage began and ended in the United States. Applying these factors to the Jones Act policy, the Court gave that seaman the benefit of the statute. Judge L. Hand said, at p. 416:

> "The Jones Act was the culmination of a series of efforts, largely those of the Seamen's Union, to secure more adequate relief for American seamen, injured in their employment. It is extremely unlikely that Congress should have meant to exclude aliens who, in every sense that mattered, were members of that class merely because they had not been naturalized . . . In Uravic v. F. Jarka Co., supra, 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312, it was at least left open whether the act applied to foreign seamen and that would go much further than to apply it to an alien, circumstanced like the libellant. We see nothing in the definatory section, § 713, Title 46 U.S.C.A., to limit the application of the act to American ships or American citizens. As to ships Uravic v. F. Jarka Co., supra, was an express answer and thereafter the definition no longer offered an obstacle to including foreign seamen."

Applying the beneficent policy behind the statute the Court held that its previously applied technical limitations must bend where the circumstances dictate.

The same ameliorating circumstances exist in the instant case. The "Hellenic Hero" bears a Greek name and flag. It is titled to a Panamanian corporation which is owned by a Greek corporation. There, her Greek contacts end. The real ownership "is essentially American" and its commerce is essentially American (412 F. 2d at 921). Ninety-five per cent of the stock in the Greek corporation is

owned by residents of the United States. The corporation has its principal office in New York, where *all* management is based, and another in New Orleans. The managing owner-shareholder has resided in the United States for over 20 years, and the vessel involved earns all of its income from trips to or from the United States.

Clearly, the same weight of circumstances exists here as in *Gambera*. There, the seaman was a resident alien who had previously sailed mostly in United States ships, but he was injured on a foreign vessel in American waters. In the instant case, the seaman is foreign, but he was injured in an American port aboard a foreign-flag ship owned essentially by long-resident aliens and managed by a company seated in the United States, which vessel operates exclusively to or from United States ports. As Judge Hand stated, to hold that the circumstances here do not come within the Act "would . . . pretty clearly defeat the overriding purpose of Congress."

In *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437, 442-43 (2 Cir., 1959), Judge Medina stated that this Court's opinion in *Lauritzen v. Larsen*, 345 U. S. 571, 97 L. ed. 1254 (1953) gives no indication whatever of an intention to repudiate *Uravic, Gerradin* or *Gambera*.

Recently, in *International Longshoremen's Local 1416 v. Ariadne Shipping Co.*, — U. S. —, 38 L. W. 4207 (No. 231, October Term, 1969, 3/9/70), this Court held that longshore work casually performed for the vessel in connection with its regular operation did not involve "any internal affairs" of the vessel, referring to *Uravic v. Jarka*.

CONCLUSION.

Under the factors set forth in *Lauritzen*, the Greek flag in this case is without any substance, and is completely outweighed by: 1. the American-based and domiciled owning corporations; 2. executive and everyday control from prin-

cipal offices here; 3. ownership of these American-domiciled corporations by persons who have resided in the United States for 20 years who became "permanent residents" 8 years before the incident; 4. the vessel involved earns her entire income from cargo going to or from the United States; the "heavy counterweight" against the fictional foreign flag overwhelmingly exists here.

The Seamen's Acts of 1915 and the amending Jones Act were adopted to assist the American merchant marine by protecting the individual rights of seamen and by equalizing the cost of operation, as concerns American commerce, between American and foreign-flag vessels. This, Congress had the Constitutional right, indeed obligation, to do. In view of the fast-fading American merchant marine, the public policy behind the Jones Act is more significant today than ever before.

The decision of the Court of Appeals for the Fifth Circuit reflects the reasoning of this Court in the past and the policy of the Congress, and should be affirmed.

Respectfully submitted,

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